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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-199

ELINOR H. KERPELMAN,
Petitioner,

v.

BOARD OF PUBLIC WORKS OF MARYLAND, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF FOR RESPONDENT BOARD OF PUBLIC WORKS OF MARYLAND IN OPPOSITION

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The Daily Record Co., Baltimore, Md. 21203

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OPINION BELOW

The Opinion of the Court of Appeals of Maryland is reported in 261 Md. 436, and 276 A. 2d 56.

QUESTION PRESENTED

Whether the decision of the Court of Appeals of Maryland was based upon an independent state ground?

STATEMENT OF THE CASE

The Court of Appeals of Maryland affirmed the order of the Circuit Court for Worcester County, Maryland, sustaining without leave to amend the demurrers filed by Respondents, Maryland Marine Properties, Inc. and Board of Public Works of Maryland, to the Bill of Complaint of Petitioner.

The Bill of Complaint sought the issuance of a mandatory injunction requiring Maryland Marine Properties, Inc. and James B. Caine, Inc. to reconvey to the State of Maryland certain lands in Worcester County, Maryland, which had been conveyed by the Board of Public Works of Maryland in accordance with the power and authority vested in the Board by Section 15 of Article 78A of the Annotated Code of Maryland. In affirming the Order of the Circuit Court, the Court of Appeals of Maryland held that the Petitioner's decisive question before it was whether or not the Petitioner had standing to sue and having concluded that she did not have such standing did not reach the other questions posed in Petitioner's Bill of Complaint.

REASON FOR DENYING THE WRIT

THE DECISION OF THE COURT OF APPEALS WAS BASED UPON AN INDEPENDENT STATE GROUND.

The Court of Appeals concluded that the Petitioner had failed to establish her standing to sue. The United States Supreme Court has held that it lacks jurisdiction to review judgments of state courts that rest on adequate and independent state grounds:

> "This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds (citing cases). The reason is so obvious

> that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and Federal judicial systems and in the limitations of our own jurisdiction." *Herb v. Pitcairn*, 324 U.S. 117, 125.

The Court of Appeals of Maryland held that the Petitioner had no standing to sue as a taxpayer because there were no allegations indicating that the actions complained of would result in higher State taxes to her and that her general allegations that the conveyances would have damaging effect upon the marine ecology of the State indicated an interest no different from that generally of citizens of the State (Pet. 5A-6A).

The United States Supreme Court has also held that one who sues as a taxpayer alleging injury by unconstitutional conduct must establish a direct dollar and cents injury or threat of injury (*Doremus v. Board of Education*, 342 U.S. 429), and that when a taxpayer seeks to restrain what he alleges are unconstitutional acts he must be able to show not only that the statute under which the government acts is invalid "but that he has sustained or is immediately in danger of sustaining some direct injury as a result of its enforcement, *and not merely that he suffers in some indefinite way with people generally.*" *Massachusetts v. Mellon*, 262 U.S. 447 at 488. (Emphasis supplied.)

CONCLUSION

For the foregoing reason, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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